IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3343 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARWAD RAMABHAI BHURABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3343 of 2002
MR GM AMIN for Petitioner No. 1-2
MR. A.J. DESAI, AGP for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 19/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1 . By this Special Civil Application under Article 226 of the Constitution of India, the petitioners pray for direction to the respondent requiring the respondent, particularly Dy. collector, Land Acquisition Rehabilitation (Irrigation), Rajkot, to make reference to the District Court for higher amount of compensation of the petitioners lands as the petitioners request for making reference under section 18 of the Land Acquisition Act came to be rejected by the order dated 27-5-2001, copies whereof are at Annexure-F.

2. It is not in dispute that by Notification under section 4 of the Land Acquisition Act (hereafter "Act") followed by Notification under section 6 of the Act, land of petitioner No.1 Barwad Ramabhai Burabhai bearing Survey No.. 144, 145 of village Vastadi, taluka Wadhwan, district Surendranagar and the land of petitioner No.2 bearing Survey No. 135 Piki of village Vadod, both in taluka Vadhwan, district Surenddranagar have been acquired. After Notification under section-9, the award came to be declared under section 11 of the Act in respect of the acquisition of aforesaid lands. Petitioners along with other co-owners as the interested persons had filed their objections at the respective stages and also filed their claim in respect of lands taken in acquisition, and the compensation came to be paid to the petitioners as the interested persons under section 11 of the Act.

3. After declaration of the award under section 11 of the Act, both these petitioners made a request to the Special Land Acquisition Officer for making reference under section 18 of the Act for enhancement in the compensation awarded under section 11 of the Act. The request for making reference under section 18 of the Act made by both these petitioners came to be rejected by order dated 27-5-2001. Said orders are at Annexure-F.

4. Petitioners in this petition have been challenging orders Annexure-F, contending that, the Special Land Acquisition Officer was not justified in rejecting request for reference under section 18 of the Act for enhancement of the compensation awarded under section 11 of the Act, in as much as the petitioner no.1 Barwad Ramabhai Burabhai and petitioner No.2 Rambhaben Becharbhai as the interested persons have been paid compensation pursuant to the award declared under section 11 of the Act, and that, the request for reference under

section-1 ought to have been granted by Special Land Acquisition Officer concerned.

5. In response to the notice issued in this petition the respondent State has filed affidavit-in-reply. In para-4 thereof it has been stated that the land belonging to Bharwad Ramabhai Bhurabhai- petitioner no.1, and Velabhai Bhurabhai at Survey Nos. 144 and 145 admeasuring an area of 1 Hectare 41 Area 00 sq. mts and 1 Hectare 49 Area 83 sq.mtrs respectively and the land of Parsottambai Becharbhai and Rambhaben Becharbhai at Survey No. 135 admeasuring an area of 1 Hectare 21 Area 41 s.mtrs situated at Vadod, Taluka Vadhwan , District Surendranagar was acquired for the purpose of Limdi-Boghavo (Vadod) No.2 Irrigation Project. It is further stated that, Notifications were published under section 4 of the Act wherein the names of Bharwad Ramabhai Bhurabhai and Velabhai Bhurabhai were notified with regard to Survey No. 144 and 145 and the names of Parsottambahi Becharbhai and Rambhaben Becharbhai were shown with regard to Survey No. 135. That the award under section 11 of the Act came to be passed on 24-12-1998 and Notice under section 12 (2) came to be issued on 14-3-1999 to the aforementioned persons. Along with the affiavit-in-reply, payment receipts have also been produced by the respondent. Perusal of the same suggests that at Sr.no. 16 Parshottambhai Becharbhai and Rambhaben Becharbhai have been paid the compensation of Rs.21,611-48 in respect of the land bearing Survey No. 135 Piki admeasuring 1 Hectare 21 Area 41 Sq.Mtrs. At Sr. No. 18 Bharwad Velabhai Bhurabhai and Ramubhai Bhurabhai have been shown as persons receiving the amount of Rs.37,457-74 for the land bearing Survey No. 144 admeasuring 1 Hectare 31 Area - 00 Sq. mtrs and Survey No. 145 admeasuring 1 Hectare 47 Area 83 Sq.mtrs. Thus it would be seen that both the petitioners have been paid compensation in respect of their land taken in acquisition and for which award under section 11 came to be passed by the Special Land Acquisition Officer.

6. The request for making reference under section 18 ofthe Act came to be made by petitioner No.1 & 2 . By the orders (Annexure-F) Special Land Acquisition Officer rejected the request for making reference under section 18 of the Act, on the ground that, the persons requesting for making reference under section 18 of the Act are not the only claimants, and that, they have not produced any power of attorney or succession Certificate. The reason assigned in the orders at Annexrue-F rejecting request for reference under section 18 of the Act cannot be sustained for the simple reason that, both the

petitioners are atleast the co-owners and interested person in the land taken under acquisition, and they have also been paid compensation in respect of the land as pointed out above. In the case of A. VISWANATHA PILLAI AND OTHRES VS. SPECIAL TAHSILDAR FOR LAND ACQUISITION NO. IV AND OTHERS, AIR 1991 S.C. 1966, it has been held by the Supreme Court that, a co-owner is as much an owner of the entire property as a sole owner of the property and reference sought by one of the co-owners of the land for enhancement of the compensation under section 18, 23 of the Land Acquisition Act would be entitled to make such a request and a reference under section 18 before the Court. It is further held that,other co-owners not expressly seeking reference would also be entitled to enhanced compensation prorata as per their shares. Thus it would be seen that any one co-owner can make request for reference under section 18 of the Act for enhancement of the compensation awarded under section 11 of the Act.

7. In view of the above, the Special Land Acquisition Officer can not be said to be justified in rejecting the request for reference under section 18 of the Act by present two petitioners.

8. In view of the above, present petition is allowed. Respondent is directed to make a reference under section 18 of the Act to the Civil Court on the basis of the request made by these petitioners within one month from the date of receipt of writ of this order, or from the date of production of certified copy of this order by the petitioners.

9. Petition is allowed accordingly. Rule made absolute. No costs.

Dt: 19-2-2003 (N.G. Nandi, J)

(D.A. Mehta, J)

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